

Message Text

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TO AMEMBASSY BRASILIA IMMEDIATE

C O N F I D E N T I A L STATE 242026

E.O. 11652:GDS

TAGS:SHUM, BR

SUBJECT: CONGRESSIONAL REQUEST FOR HUMAN RIGHTS INFORMATION

REF: STATE

1. FOLLOWING IS LATEST, PARTIALLY CLEARED DRAFT OF BRAZIL HUMAN RIGHTS REPORT REFERRED TO IN SEPTTEL PARA 2 SAME SUBJECT.
 2. BEGIN TEXT: I. POLITICAL SITUATION. WHEN IT ASSUMED POWER IN EARLY 1974, THE ADMINISTRATION OF PRESIDENT GEISEL PUBLICLY COMMITTED ITSELF TO A GRADUAL RELAXATION OF THE STRICT CENTRALIZED CONTROLS OVER POLITICAL AND CIVIL LIBERTIES INTRODUCED SINCE THE 1974 REVOLUTION. PART OF ITS EFFORTS WERE DIRECTED AT ESTABLISHING A DIALOGUE WITH THE CHURCH AND STUDENTS AND ATTEMPTING TO ADOPT THE PRINCIPLE, AT LEAST, OF ACCOUNTABILITY IN FORMALLY RESPONDING TO INQUIRIES ABOUT THOSE WHO WERE BELIEVED TO HAVE BEEN ARRESTED FOR SUBVERSION. AT THE SAME TIME, THE OFFICIALLY RECOGNIZED OPPOSITION PARTY, ESPECIALLY AFTER ITS SURPRISINGLY STRONG SHOWING IN THE NOVEMBER 1974 CONGRESSIONAL ELECTIONS, SHOWED ITSELF INCREASINGLY INCLINED TO SPEAK OUT ON HUMAN RIGHTS ABUSES AND CALL FOR PUNISHMENT
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OF THOSE GUILTY OF SUCH OFFENSES. MEMBERS OF THE CHURCH AND REPRESENTATIVES OF PROFESSIONAL ORGANIZATIONS ALSO JOINED IN THIS ACTIVE PUBLIC DEBATE WHICH WAS AMPLY REFLECTED IN THE PRESS AS IT TOOK ADVANTAGE OF LOOSENING

CENSORSHIP CONTROLS.

CONSERVATIVE ELEMENTS -- MOST NOTABLY WITHIN THE VARIOUS SECURITY ORGANIZATIONS -- HAVE CITED A CONTINUING SECURITY THREAT AS A BASIS FOR DISCOURAGING POLITICAL LIBERALIZATION. THEIR INFLUENCE WAS MUCH IN EVIDENCE LAST YEAR. DURING 1975, POLITICAL ARRESTS AND REPORTS OF ABUSE INCREASED IN SAO PAULO AND OTHER BRAZILIAN CITIES IN THE AFTERMATH OF THE DISCOVERY OF BRAZILIAN COMMUNIST PARTY PRINTING PRESSES AND CLAIMS OF COMMUNIST INFILTRATION INTO STATE GOVERNMENTS AND THE STATE MILITIA. IN A SPEECH LAST AUGUST, PRESIDENT GEISEL, WHILE DEFENDING THE LIBERALIZATION WHICH HAD TAKEN PLACE, SIGNALLED A SHIFT IN EMPHASIS FROM POLITICAL INITIATIVES TO SOCIAL AND ECONOMIC CONCERNS. HE ALSO ACTED UNILATERALLY, UNDER THE AUTHORITY OF NATIONAL SECURITY AND INSTITUTIONAL ACT NO. 5, TO REMOVE FROM OFFICE INDIVIDUAL MEMBERS OF THE STATE AND FEDERAL LEGISLATURES. (THIS LAW GIVES THE EXECUTIVE BROAD POWERS TO ESTABLISH RESTRICTIONS ON THE EXERCISE OF PUBLIC OR PRIVATE RIGHTS AND TO SUSPEND HABEAS CORPUS AND JUDICIAL REVIEW.)

AS A RESULT OF RECENT DEVELOPMENTS, HOWEVER, THE ADMINISTRATION NOW APPEARS TO BE RESUMING SOME FORWARD MOTION ON ITS INITIAL COMMITMENT. FOLLOWING THE SECOND DEATH WITHIN THREE MONTHS OF A PRISONER IN THE CUSTODY OF THE II ARMY SECURITY FORCES IN SAO PAULO, PRESIDENT GEISEL PROMPTLY REMOVED THE II ARMY'S COMMANDING GENERAL. A CONSIDERABLE NUMBER OF PERSONNEL CHANGES REPORTEDLY FOLLOWED IN THE SAO PAULO COMMAND AND ELSEWHERE IN THE SECURITY STRUCTURE. OVER THE FIRST HALF OF 1976 GREATER ATTENTION HAS APPARENTLY BEEN GIVEN TO OBSERVANCE OF AT LEAST THE FORMS OF LEGAL PROCEDURE IN ARRESTS ON SUSPICION OF ILLEGAL POLITICAL ACTIVITIES, AND REPORTS OF MISTREATMENT OF POLITICAL PRISONERS HAVE VIRTUALLY CEASED.

THE FIGHT AGAINST SUBVERSION, USUALLY BROADLY DEFINED,
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CONTINUES, HOWEVER, AS DOES THE POTENTIAL FOR SERIOUS ABUSES. THE SITUATION IS ILL DEFINED. EVENTS RANGING FROM A SPECIFIC INCIDENT TO A BROAD NATIONAL POLITICAL DEVELOPMENT, SUCH AS A SETBACK FOR THE GOVERNMENT'S PARTY IN THIS YEAR'S MUNICIPAL ELECTIONS, COULD HAVE SIGNIFICANT IMPACT ON THE INTENSITY AND METHODS OF THE "ANTI-SUBVERSION CAMPAIGN." MEANWHILE, AN ACTIVE PUBLIC DEBATE CONTINUES WITHIN BRAZIL OVER HUMAN RIGHTS, LIBERALIZATION AND INSTITUTIONALIZATION OF THE PRESENT SYSTEM.

II. LEGAL SITUATION. THE BRAZILIAN CONSTITUTION INCLUDES SUCH INTERNATIONALLY RECOGNIZED LEGAL GUARANTEES AND HUMAN RIGHTS PROVISIONS AS, INTER ALIA, EQUALITY BEFORE THE LAW,

FREEDOM OF CONSCIENCE, FREEDOM OF POLITICAL AND PHILOSOPHICAL CONVICTIONS, INVIOABILITY OF THE HOME, INVIOABILITY OF COMMUNICATIONS, FREEDOM FROM ARBITRARY ARREST, ASSURANCE OF FULL DEFENSE, FREEDOM OF PEACEFUL ASSEMBLY.

THE CONSTITUTION ALSO PROVIDES FOR THE DECREE OF A STATE OF SIEGE BY THE PRESIDENT IN CERTAIN SITUATIONS, BUT THIS POWER HAS NOT BEEN USED. INSTEAD, SINCE THE REVOLUTION OF 1964, THE GOVERNMENT HAS STRENGTHENED ITS AUTHORITY WITH CERTAIN "EXCEPTIONAL MEASURES" WHICH, IN EFFECT, ENABLE THE EXECUTIVE TO OPERATE OUTSIDE THE CONSTITUTION AT ITS OWN DISCRETION WITH NO PROVISIONS FOR SUBSEQUENT REVIEW. THESE MEASURES ARE: DECREE-LAW 477, HAVING TO DO WITH THE REMOVAL FROM UNIVERSITY ACTIVITY OF ANYONE, STUDENT OR TEACHER, DEEMED GUILTY OF PROSCRIBED POLITICAL ACTIVITY; THE NATIONAL SECURITY LAW (DECREE-LAW 898) INVOLVING THE TREATMENT, NOT ALWAYS CONSTITUTIONAL, OF THOSE SUSPECTED OF SPECIFIED ACTS AGAINST THE NATIONAL SECURITY; AND INSTITUTIONAL ACT NO. 5, WHICH GIVES THE PRESIDENT THE POWER TO CLOSE THE CONGRESS, INTERVENE IN STATES OR MUNICIPALITIES, REMOVE ELECTED OFFICIALS FROM OFFICE, AND DEPRIVE PERSONS OF THEIR POLITICAL RIGHTS FOR TEN YEARS (AN ACT KNOWN AS "CASSATION").

THE JURIDICAL STATUS OF THESE ACTS IS COMPLICATED BY ARTICLE 181 IN THE SECTION OF THE CONSTITUTION ENTITLED "GENERAL AND TRANSITORY PROVISIONS," WHICH APPROVES AND CONFIDENTIAL

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EXCLUDES FROM JUDICIAL REVIEW VIRTUALLY ALL MEASURES TAKEN BY THE EXECUTIVE SINCE 1964. IN ADDITION, ARTICLE 182 DECLARES SPECIFICALLY THAT INSTITUTIONAL ACT NO. 5 OF DECEMBER 1968 AND THE OTHER ACTS ISSUED SUBSEQUENTLY, CONTINUE IN FORCE. THUS, WHILE THESE MEASURES ARE CONSIDERED "EXCEPTIONAL," AS OPPOSED TO CONSTITUTIONAL, THEY ARE THUS SANCTIONED BY THE CONSTITUTION. INDICATIONS ARE THAT THE EXECUTIVE HAS NO INTENTION, AT LEAST FOR THE FORESEEABLE FUTURE, OF RELINQUISHING ANY OF ITS SPECIAL POWERS.

III. OBSERVANCE OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS .

A. INTEGRITY OF THE PERSON. ARTICLE 3: THE RIGHT OF LIFE, LIBERTY AND SECURITY OF THE PERSON IS GUARANTEED BY ARTICLE 153 OF CHAPTER IV OF THE BRAZILIAN CONSTITUTION, WHICH ENSURES THE INVIOABILITY OF SUCH RIGHTS. ABUSES CONTINUE TO BE REPORTED NEVERTHELESS, AND SOME APPEAR ATTRIBUTABLE TO GOVERNMENT ACTIONS.

ARTICLE 5: REPORTS EXIST OF POLITICAL DETAINEES BEING

SUBJECTED TO TORTURE, CRUEL, INHUMAN DEGRADING TREATMENT OR PUNISHMENT BY OFFICIAL AGENCIES. ARTICLE 153, PARAGRAPH 14, PROSCRIBES SUCH TREATMENT. ABUSES HAVE ARISEN IN CONJUNCTION WITH ARRESTS AND DETENTIONS MADE IN THE NAME OF NATIONAL SECURITY. ALTHOUGH ACTIONS CARRIED OUT ON THE BASIS OF THE NATIONAL SECURITY LAW ARE NOT SUBJECT TO REVIEW, THE GOVERNMENT HAS, IN SOME INSTANCES, LAUNCHED INQUIRIES INTO REPORTS OF ABUSES. ACTIONS AGAINST DEATH-SQUAD ACTIVITIES HAVE INCLUDED FORMAL JUDICIAL ACTION, BUT THREAT OF REMOVAL FROM OFFICE APPEARS TO BE THE ONLY INHIBITION IN REAL TERMS AGAINST THE MIS-TREATMENT OF ALLEGED SUBVERSIVES. SINCE JANUARY, THERE HAVE BEEN INDICATIONS THAT PERSONS ARRESTED IN SECURITY CASES ARE BY AND LARGE NOT BEING SUBJECTED TO TORTURE OR HARSH CONDITIONS OF INTERROGATION OR CONFINEMENT. THERE IS NO ASSURANCE THAT THIS TREND WILL CONTINUE, MUCH LESS THAT IT WILL BE OBSERVED IN ALL CASES.

ARTICLE 8: THE RIGHT TO OBTAIN LEGAL REDRESS FOR
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VIOLATIONS OF THEIR RIGHTS IS, IN PRACTICAL TERMS, NOT AVAILABLE TO POLITICAL DETAINEES.

ARTICLE 9: ARBITRARY ARREST AND DETENTION OCCUR IN BRAZIL. ARTICLE 153, PARAGRAPHS 12, 21 AND 22 PROSCRIBES SUCH ACTION. OFFICIAL ACTIONS CARRIED OUT UNDER THE AUTHORITY OF THE NATIONAL SECURITY LAW ARE NOT, HOWEVER, BOUND BY THE CONSTITUTIONAL PROVISIONS, NOR SUBJECT TO REVIEW. NONETHELESS, ARMY COMMANDS HAVE RECENTLY ADOPTED THE PRACTICE OF ISSUING PUBLIC STATEMENTS LISTING PEOPLE ARRESTED AND PROMISING DECENT TREATMENT AND FULL LEGAL PROTECTION.

ARTICLE 10: FAIR HEARINGS BY IMPARTIAL TRIBUNALS TO DETERMINE THEIR RIGHTS ARE, AGAIN IN PRACTICAL TERMS, NOT AVAILABLE TO POLITICAL DETAINEES. ARTICLE 153, PARAGRAPH 30, OF THE CONSTITUTION PROVIDES EVERY PERSON THE RIGHT TO MAKE REPRESENTATION TO THE PUBLIC AUTHORITIES IN THE DEFENSE OF RIGHTS AGAINST ABUSES OF AUTHORITY. THIS PROVISION SUGGESTS THE CREATION OF SUCH A TRIBUNAL TO HEAR CLAIMS. ORGANIZATIONS SUCH AS THE BRAZILIAN HUMAN RIGHTS COMMISSION AND THE BRAZILIAN BAR ASSOCIATION HAVE HEARD AND MADE RECOMMENDATIONS TO THE CONGRESS AND THE EXECUTIVE REGARDING HUMAN RIGHTS ABUSES.

ARTICLE 11: FAIR TRIALS ARE NOT GENERALLY AVAILABLE TO POLITICAL DETAINEES. ARTICLE 153, PARAGRAPHS 1, 2, 4, 15, 18, 32 OF THE CONSTITUTION ESTABLISHES THE RIGHT TO A FAIR TRIAL. OFFICIAL ACTIONS CARRIED OUT UNDER THE AUTHORITY OF THE NATIONAL SECURITY LAW ARE NOT ALWAYS SUBJECT TO

THESE PROVISIONS, OR TO SUBSEQUENT REVIEW. RECENTLY, INDIVIDUALS ARRESTED ON THE BASIS OF NATIONAL SECURITY SEEM TO HAVE BEEN ACCORDED MORE OF THE ELEMENTS OF A FAIR TRIAL, EVEN WHILE BEING TRIED BY THE MILITARY RATHER THAN THE CIVILIAN JUDICIAL SYSTEM.

B. OTHER IMPORTANT FREEDOMS

ARTICLE 153, PARAGRAPH 1, OF THE CONSTITUTION GUARANTEES FREEDOM FROM DISCRIMINATION. THE GOVERNMENT DOES NOT
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OFFICIALLY ENCOURAGE DISCRIMINATION BASED UPON SEX, RACE, OCCUPATION OR RELIGION. NEVERTHELESS, SOME BRAZILIANS CLAIM THAT A CERTAIN DEGREE OF RACE DISCRIMINATION DOES EXIST. THE GOVERNMENT HAS NOT PLACED LARGE SCALE RESTRICTIONS ON MOVEMENT INTO, OUT OF AND WITHIN THE COUNTRY; WHEN CERTAIN RESTRICTIONS HAVE BEEN IMPOSED, THIS HAS BEEN ON THE GROUNDS OF NATIONAL SECURITY AND THE PROTECTION OF NATIONAL TERRITORY, AND THE NUMBERS OF INDIVIDUALS AFFECTED HAVE BEEN RELATIVELY SMALL. ARTICLE 153, PARAGRAPHS 22, 33, 34, PROVIDES FOR OWNERSHIP OF PROPERTY IN ACCORDANCE WITH ESTABLISHED LAW. INDICATIONS ARE THAT OFFICIAL GOVERNMENT POLICY SUPPORTS THIS RIGHT.

ARTICLE 153, PARAGRAPHS 5, 6, GUARANTEES FREEDOM OF THOUGHT AND RELIGION. THE GOVERNMENT OFFICIALLY RECOGNIZES FREEDOM OF RELIGION. POLITICAL PHILOSOPHIES CONSIDERED SUBVERSIVE MAY BE DEALT WITH UNDER AUTHORITY OF THE NATIONAL SECURITY LAW. ARTICLE 153, PARAGRAPH 8, PROVIDES FOR FREEDOM OF EXPRESSION, BUT WITH LEGAL RESTRICTIONS. THERE IS CENSORSHIP, THOUGH IT IS FAR FROM CONSISTENT OR COMPLETE; THERE HAS BEEN ACTIVE PUBLIC DEBATE RELATING TO HUMAN RIGHTS AND THE FUTURE COURSE OF POLITICAL LIBERALIZATION, AND OPEN CRITICISM OF GOVERNMENT POLICIES IN A NUMBER OF AREAS. ARTICLE 153, PARAGRAPH 29, EXTENDS THE RIGHT OF ASSEMBLY, IN ACCORDANCE WITH EXISTING LAWS. GOVERNMENT CONCERN FOR NATIONAL SECURITY AND MAINTAINING ORDER IMPOSE LIMITATIONS ON THIS RIGHT.

IV. OTHER HUMAN RIGHTS REPORTING

IN 1972 AMNESTY INTERNATIONAL PUBLISHED A REPORT ON ALLEGATIONS OF TORTURE IN BRAZIL. AN UPDATED VERSION WAS PUBLISHED IN 1976. THE REPORTS WERE BASED UPON MATERIAL AVAILABLE IN EUROPE AND NORTH AMERICA, INCLUDING DEPOSITIONS AND LETTERS FROM PRISONERS WHO ALLEGE THEY HAVE BEEN SUBJECTED TO TORTURE, ACCOUNTS BY CLAIMED EYEWITNESSES, BY LAWYERS, JOURNALISTS, AND CHURCHMEN AND PRESS REPORTS. THE DOCUMENTS CITED EVIDENCE OF MANIFOLD TYPES OF TORTURE INCLUDING PHYSICAL MENTAL AND SEXUAL

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ABUSE.

AMNESTY'S 1974-75 ANNUAL REPORT REPORTED EXTENSIVELY ON ALLEGATIONS OF HUMAN RIGHTS VIOLATIONS IN BRAZIL.

THE ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS FOR 1973 STATED THAT EVIDENCE GATHERED AND INCLUDED IN THE REPORT LED TO THE PERSUASIVE PRESUMPTION THAT IN BRAZIL SERIOUS CASES OF TORTURE ABUSE, AND MAL-TREATMENT HAVE OCCURRED "OF PERSONS...WHILE THEY WERE DEPRIVED OF THEIR LIBERTY." THE 1975 ANNUAL REPORT LISTS FIVE NEW CASES THE COMMISSION HAS TAKEN UP INVOLVING CHARGES OF ARBITRARY ARREST AND DETENTION.

INDIVIDUAL ALLEGATIONS OF BRAZILIAN GOVERNMENT HUMAN RIGHTS ABUSES WERE PRESENTED IN 1974 TO A SUBCOMMISSION OF THE UN HUMAN RIGHTS COMMISSION PURSUANT TO THE PROCEDURES AUTHORIZED IN UNESCO RESOLUTION 1503. ACTION ON THE BRAZIL CASE WAS DEFERRED BY THE COMMISSION AT ITS 1975 SESSION PENDING A PROMISED RESPONSE BY THE BRAZILIAN GOVERNMENT. THIS RESPONSE WAS CONSIDERED AT THE FEBRUARY 1976 SESSION, AND THE COMMISSION DECIDED TO TAKE NO FURTHER ACTION, ON THE GROUNDS THAT SUFFICIENT REMEDIES TO PROTECT HUMAN RIGHTS EXISTED UNDER BRAZILIAN LAW.

FREEDOM HOUSE LISTS BRAZIL AS "PARTIALLY FREE." ROBINSON

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